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Department of Board

OFFICE _____

STATION Kalpa

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(SUBJECT.)

Suit S. Ranga Mangalore Sub Court - OS. No 2/19
Escheated property - Deceased Lavanya Shetty - Appeal
directed.

Not to be filled in the case of permanent records.

C.F. 20—4-2-14.

DRAFT FOR APPROVAL.

Office.

Enclosures.

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R. dated

From

A 2502/21 — ——— G

Subject.

Suit (S. Kanara) Mangalore Suit Land — O.S. No 2/19 — Escheated property — Deceased Daraya Shetty — Appeal.

To

THE

Ref A 2502-21-1 dt. 6.7.21

The Collector's letter will be forwarded to the Govt Pleader Madras who is requested to advise the Board whether an appeal to the High Court is likely to be successful. An early reply is requested

To The G.P. Madras.
with c/c. Records as per page 4 ch & Bk. 14
1360 of 1883
9.10.18 4.11.16

Note:- It seems probable that the Subordinate Judge is right in holding that the Tahasildar only means to say that there were no direct heirs in that particular branch.

V

there was no need for saying whether there were the most distant collateral heirs. But the Govt Officer says that that is necessary to obtain a Succession Cert. The Sub Judge denies that. As points of law are involved, the G P May be considered as otherwise the Case of appeal to the H C while the heavy the Value of the subject matter about 20 000 Rs.

Rules 102 of (h).

Rule 450 46 of Jud Ct

6/21

Very Urgent 3

Government Pleader's Office,

High Court,

Madras, 18th July 1921.

Received No. 25

A 2702

From

C. Madhavan Nair, Esq.,

Government Pleader,

Madras.

To

The Secretary to the Board of Revenue,

Land Revenue, Chepauk

Sir,

In reply to Board's Reference No. A. 2502-21-1. dated 6th July 1921, I have the honour to forward herewith my opinion in the matter.

The ~~records~~ received with the Board's Reference are retained here pending orders of the Board.

I have the honour to be.
Sir,
Your most obedient servant,

C. Madhavan Nair

Government Pleader.

O p i n i o n.

In my view there are good grounds for preferring an appeal in this case. On the issue whether Durgi left no heirs and whether the plaint properties have escheated to the Crown the documentary evidence lends considerable support to the case of escheat set up by the Government. Ex. DD (the Thahanamah attested by the claimant's uncle) and CC (the judgment in appeal 200, 211, 220 of 1880) have been misinterpreted by the learned Judge. The Kudtala proceedings also support the plaintiff's case. I am not here offering a detailed criticism of the learned Judge's judgment as I agree generally with the points urged by the Government Pleader in his memorandum and also with the views of the Collector especially with reference to exhibits CC and U1. Beyond the statement contained in the vakalatnama that Sheshia Shetty is the cousin or brother of Kollu Shettithi there is really no substantial evidence to support the claim of Ananthayya to the property in question. The oral evidence of P.W. 3 and P.W. 12 is not entitled to much weight. The fact that certain records were not produced by the plaintiff and that the Government at first dropped the escheat proceedings seem to have considerably influenced the learned Judge in dismissing the plaintiff's case.

The Government's claim to the Mulgeni property does not seem to be strong but there is a certain amount of evidence to support the argument that the 2 Mulgenis were never intended to to be given effect to. If an appeal is decided upon, I would advise that a ground may be added with reference to this part f the case also.

I do not find any remark in the Collector's letter regarding improvements and mesne profits. The Government offered to pay only a very small amount as value for the improvement; but the Judge has ~~offered~~ the large sum of Rs. 26534-13-6 to be deposited in case of eviction. I take it that the appeal memo

should

should contain grounds with regard to these as well as item 3 in the plaint. -

The Collector suggests (para 7 of his letter) that the Local Government Pleader should be deputed to instruct me at the time of the filing of the appeal or subsequently. I may be permitted to point out that the instructions of the Local Government Pleader in the manner indicated by the Collector will be more helpful to me at the time of the filing of the appeal and if the Government approves of the Collector's suggestion a telegram may be sent to him to meet me as the High Court re-opens on the 25th

C. Sankaran Nair

Madras, 18th July 1921. Government Pleader.

~~250~~
A 2762)

Suits (S. Kanara) Mangalore Sub Court O.S. No 2/15
Escheated property - Deceased Danayya Shetty -
Appeal directed
Res. Ms 830/19.7.21

The Board agrees with the Govt Pleader Madras that
an appeal should be filed against the decree of the Sub
Judge Mangalore in O.S. 2/19 The Collr Madras is requested
to file the appeal in the High Court and to hand over
a copy of the Memo of appeal

2. The Memo of appeal should include the grounds that
the 2 Mulgenis were never intended to be given Effect to
the question of improvements, mesne profits and of
No 3 in the plaint should also be raised.

3 The Collr is requested to depute the local Dist to District the Dist. Madras at the time of the filing of the appeal

The following telegram will be sent to the Coll of S. Kanara Your letter 1707 dated 18th June (Sub Court. Suit No 2) Daraya Shetty's (Escheated) Property Appeal to (the) High Court directed District local Govt to meet Govt Please Madras ~~at the time of (the) filing of appeal~~ as has to be filed

4 The Dist Madras on 25th is requested to return the Collrs letter A Copy of ~~which~~ it will be furnished to him

Wr 19.7

Secy Govt 1921

27/24 (8) 24

To The Dist. Madras
Collr S Kanara. Pm
no 7.21

To Secy

B.P. Below has revised ... May be Submitted to M,

9 R 126. Mangalore

Ref. on No. 1707-20-V. 3. South Kanara Collector's Office,

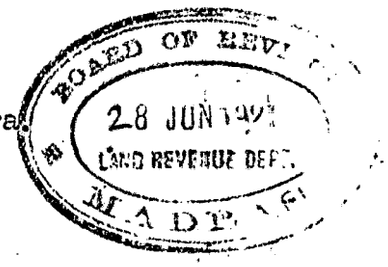
Mangalore, 18th June 1921.

A 2502

From

R. H. Ellis, Esquire, I.C.S.,

Collector of South Kanara.



To

The Secretary to the Board,

Land Revenue, Madras.

(E) B.P. Mis. No. 1360 L.R. dated 9th October 1918.

Suit - 2/19 - Sub Court, South Kanara.

The above suit which was filed with the sanction of the Government conveyed in their order No. 2317, Revenue, dated --- 10th October 1916, communicated with B.P. No. 1360 L.R. dated 4th November 1916, was dismissed by the Sub Judge on 26th ---- February 1921 - vide copies of judgment and decree enclosed.

2. On the 1st issue whether there are heirs to the ---- proper

admitting the documents relied on by us, has interpreted them in a different way. He makes a distinction between succession by survivorship and succession by inheritance and holds that - the statement that is contained in all the documents produced on our behalf to the effect that there are no heirs only means that there are no direct heirs who could take by survivorship and not, as is contended by us, all heirs, divided or undivided.

3. He is of the opinion that the claimant Anthaya Shetty who has since died was the collateral heir of Daraya Shetty's family and that there are even now collateral heirs entitled to succeed to the property of Daraya Shetty's family. There is no evidence worth the name to support this conclusion. In this connection Exhibits CC and U are of very great importance. In Exhibit U_1 this very Anthaya Shetty has stated that Duggappa

Shetty (another claimant) belonged to his family, that ------- Kavanjur Annappa Shetty, one of the Plaintiffs in Ex.CC, was the uncle of this Duggappa Shetty and that his own ancestress, Parameshri Shedthi, was of the same family as the Kavanjur --- people. The claim of the Kavanjur people to succeed to the - property has been negatived by the District Judge in Ex.CC. Hence the claim of Anthaya Shetty which stands on no better -- footing must likewise fail. The Sub Judge, however, thinks - that Ex.CC dealt with only the undivided status which the ---- Plaintiffs therein had put forward and not the collateral relationship which has now been brought forward - vide paragraph 26 of the judgment. But the very fact that the Plaintiffs sued as members of Kavanjur family (paragraph 8 of the judgment Ex.CC printed on page 11 of G.O. No.2317 dated 10th October 1916) seems to be fatal to this contention. Further, the observation in paragraph 27 of Ex.CC that, whatever might be the ---- family to which the adoptee Venkamma belonged, her adoption -- into the Halady family clearly gave no rights to the other --- members of her original family is clear on the point that the District Judge in Ex.CC was not considering whether the Plaintiffs had rights in the property as undivided members of his - family. On the other hand, the idea that the Plaintiffs were suing as members of a branch separate from Halady seems to be running through the whole of the judgment. If Anthaya Shetty, a member of the Choradi family, were really a collateral of -- Kollu Shedthi, his uncle Patri Surappa Shetty would not have - attested the Tahanama which was adverse to his reversionary -- right and the Choradi house would not have failed to take ---- action to set aside the Tahanama and to recover the property which is a very valuable one. The Sub Judge says that Surappa Shetty could not be taken to have known the recitals in the -- Tahanama before he attested it. It seems to me that it is too much to make a presumption like this. On the whole, the Sub-Judge has taken a very perverse view on every point that is --

really favourable to Government.

4. That the Sub Judge was prejudiced against Government seems to be apparent from the insinuation made by him to the effect that certain records have been wilfully withheld by Government, in spite of the Exhibits R and T and the evidence of the Suits Clerk of my office (P.W.11) which show that every effort was made by Government on their own initiative to get these records produced in Court.

5. The Sub Judge has exhibited the same prejudice while deciding the other issues also. These ~~items~~ as well as issue have been fully discussed by the Government Pleader, Mangalore in the notes of arguments (a copy of which is herewith submitted). I fully agree with what he says.

6. As regards an appeal to the High Court, the Government Pleader says that he has strong, if not certain hopes that Government will succeed, should one be preferred. I accordingly recommend that it may be sanctioned. Should the Board decide on an appeal, the Government Pleader, Madras may be asked to consider the question of the Government's claim to the mulgeni property, item No.2 of the plaint schedule, with regard to which the Government Pleader, Mangalore, expresses some doubt.

7. It seems desirable to depute the local Government Pleader to instruct the Government Pleader at Madras at the time of filing the appeal or subsequently so that the latter may be made to understand the exact import of the various documents relied on by Government. Orders are solicited in the matter.

8. The appeal, if any, has to be filed on the 25th July next, the date on which the High Court reopens, as the appeal time expires on the 16th idem.

9. The marginally noted records are enclosed, as also a list of documents to be printed and translated on behalf

1

of Govern-

ment.

1. Copy of plaint.
2. Certified copy of written statement of Defendants 1 and 2.
3. Certified copy of Commissioner's report (Ex. VI).
4. Certified copies of Commissioner's Schedules A, B, C and D (Ex. VIa).
5. Certified copy of the Commissioner's further report (Ex. VIb).
6. Copies of statements Nos. 1 and 2 (Ex. B and B_1).
7. Certified copy of decree in O. S. 52 of 1869 on the file of the Barkur Munsif's Court (Ex. VIII).
8. Copy of Kollu Shedthi's petition dated 10. 2. 1868.
9. Certified copies of Exhibits I, V and VII.
10. Certified copies of Exhibits D, E, F, G, H, M, O, P, V, Z, Z_1, Z_2, Z_3, BB, EE with 3 typed copies of a translation certified by the local Government Pleader to be a true translation.
11. Printed copy of Ex. Q.
12. Certified copies of Ex. U_1, AA and A_1.
13. Copies of Exhibits FF, GG and HH with one copy of translation each.
14. Certified copies of depositions of P. Ws. 1, 4, 5 and 11.
15. Certified copies of depositions of P. Ws. 2, 3, 6 to 10, 12 and 13 with 3 typed copies of a translation certified by the local Government Pleader to be a true translation.
16. Certified copy of deposition of D. W. 1.
17. certified copy of judgment in O. S. No. 267 of 1878 on the file of the District Munsif of Barkur.
18. Copy of Ex. B_2.
19. Copy of notes of Mangalore Government Pleader's arguments.
20. Certified copies of judgment and decree in the suit with one typed copy of each.
21. Copy of Government Pleader's letter No. 92 dated 13th May 1921.
22. List of documents to be printed and translated.

24-6-21

For Collector

22-6-21 22/6/21

A2885

9)

Government Pleader's Office,
High Court,
Madras, 25th July 1921.

No. 241.

From

C. Madhavan Nair Esq.,
Government Pleader,
Madras.

Jo 1-H
This may be filed with
Pap 830 dt 19-7-21 (E)

To

The Secretary to the Board of Revenue,
Land Revenue,
Chepauk, Madras.

Sir,

With reference to Board's Proceedings No. 830 (Miscellaneous), dated 19th July 1921, I have the honour to forward herewith a copy of appeal Memo filed to-day in the High Court against O.S. No. 2/19, on the file of the Sub Court, South Kanara. The letter in original from the Collector of South Kanara Ref. on No. 1707-20-V.3, dated 18-6-21, is herewith returned with a request that a copy of it may be sent to me for my reference.

2. I request that you will be so good as to instruct the Collector to send me a Remittance Transfer Receipt for Rs.1029/- being the amount paid to-day into High Court in Stamps and Stamp papers in filing the above said appeal.

I have the honour to be,
As No. Sir,
Dorsa Your most obedient servant,

C. Madhavan Nair
Government Pleader.

Cemphiaer
1707-20-V.3 dt 18-6-21

The Memorandum of Appeal.

In the Court of the Subordinate Judge of South Kanara

O. S. No. 2 of 1919.

In the High Court of Judicature at Madras.

A. S. No. of 1921.

	In the Sub Court	In the High Court.
The Secretary of State for India in Council.....	Plff.	Applt.
Vs.		
1. Duggappa Bhonderi.....		
2. Ramaya Shetty.....		
3. Venkamma Bhattithi.....	Defts.	Respts.

1st grand nephews of Veeraiamma Shetty residing in Haladi village, Udipi Tq.
Sons of Nadiappa Shetty residing in Hanagavalli village, Bhombattu Magane Kundapur Taluk.

The Government Pleader, Madras, on behalf of the Appellant above named, begs to prefer to this Honourable Court this Memorandum of Appeal against the decision in O.S. No. 2 of 1919, on the file of the Sub Court, South Kanara, dated 28-2-1921, for the following among other grounds:

1. The decision of the lower court is against law, the weight of evidence and the fair probabilities of the case.

2. The learned Subordinate Judge should have found that all the suit properties escheated to Government for want of heirs on the death of Durgi Bhattithi and that the Government is entitled to recover possession thereof with mesne profits from the defendants (respondents).

3. The learned Subordinate Judge should have held on a proper construction of Exhibit DD. that the Government is entitled to recover the properties on the death of Durgi. The recitals of Ex. DD have been misconstructed by the lower Court.

4. The learned Subordinate Judge should have held that Ex. CC clearly proves the Government's case against the defendants. The learned Subordinate Judge has failed to give due weight

the Kuddle Records Exhibits D to H. These documents amply support the claim of the Government.

5. The learned Subordinate Judge has erred in his view in that the word " heirs" in the documents which supports the plaintiff's case refer only "to members who could succeed to the Estate by Survivorship and who were undivided in interest with Daraya Shetty and Kollu Shettithi.

6. The distinction in law which the learned Subordinate Judge makes between Survivorship and Inheritence is unknown to Aliyasanthana law. There is no basis or authority for such a distinction.

7. The learned Subordinate Judge should have held that the adoption of Venkamma clearly shows that according to Aliyasanthana Law and there existed no members in the family either near or remote at the time of the adoption entitled to succeed to the Estate on the death of Daraya Shettithi.

8. The learned Sub Judge is wrong in surmising that the Government dropped escheat proceedings in 1905 because of the existance of Remote heirs who could according to Sub Judge's view of Aliyasanthana Law succeed to the estate.

9. The admission made by Anantharma Shetty in Exhibit 2F 8, is sufficient by itself to show that the members of the immediate family to which the claimant belongs has no community or interest with the Haladi family of Daraya Shetty.

10. The learned Subordinate Judge has erred in deciding against the Government's claim mainly relying on the wording of a Vakalatnama (not forthcoming) said to have been given by Kollu Shettithi in a Kosagame case.

11. Even if Kollu Shettithi had described claimant's brother Soosha Shetty as "Anna" that would not prove the relationship of

Shosha

Sheshu Shetty to the Halady family, if at all, it would only show that Seshu Shetty might have been related to her in her maternal family.

12. The evidence of P.W. 3 and P.W. 12 should not have been relied upon by the Subordinate Judge; the evidence of P.W. 12 is contradicted by his own admission by Exhibits EE, AA. etc. and that of P.W. 3 is purely hearsay.

13. The fact that since the death of Durga Shettiani - (which took place in 1876) no member of the Choradi family ever came forward with any claim to the Halady estate shows clearly that Choradi family was not in any way connected with the Halady family.

14. The learned Subordinate Judge has erred in drawing any adverse inference against Government on account of the non-production of the records relating to the Hosagane case: the evidence of the Graduate clerk P.W.11, given a completely satisfactory explanation for the non-production of those records.

15. The learned Subordinate Judge was wrong in drawing adverse conclusions against Government on account of their having dropped the contempt proceedings in 1938: the P.W. (illegible) - explains the real reasons which led Government to drop proceedings

16. In the circumstances of the case the learned Subordinate Judge should have held that the burden of proving that the Chorcai house was connected with the Halady family lay mainly on the - defendants and that they have failed to discharge that onus.

17. The learned Subordinate Judge has erred in giving any effect to the so called Mulgenis on Item 2, he ought to have held that even if these Mulgenis existed they were never given any effect nor were they intended to be operative at all.

18. The Subordinate Judge has not given due consideration to the fact that the Mulgenises are not supported by any valid documents.

19. The

19. The learned Subordinate Judge has erred in holding that the Government's right regarding the suit Kulgenis are barred by limitation.

20. In any event the learned subordinate Judge should have given a decree in favor of the Government regarding item 3, which came into existence long after Exhibit DD.

21. The learned subordinate Judge should have held that persons to the extent offered by Government the defendants are not entitled to claim anything more for the improvements on the [illegible] properties.

22. The learned Judge erred in discarding the reports of the experienced officials, viz. Supervisor P.W.1 and of the Tahsildar P.W.4 regarding the value of the improvements.

23. The Subordinate Judge is wrong in holding that the plaintiff is not entitled to means profits prior to 1910.

24. The learned Sub Judge should have found all the issues in favour of the plaintiff and should have decreed the suit in toto.

(s) Cuddhavan Nair

Madras, 25th July 1921. Government Pleader.

Memo of Valuation.
Value of Appeal is same as in the Lower Court..... Rs. 32499-9-7.

Stamp duty thereon paid is.....Rs. 1015-0-0.

(s) Madhavan Nair

Government Pleader.